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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

JUN 23 1997

Federal Communications Commission  
Office of Secretary

In the Matter of )  
Wireless Telecommunications Bureau )  
Seeks Comment on )  
Broadband PCS C and F Block )  
Installment Payment Issues )

WT Docket 97-82  
Public Notice DA 97-679

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COMMENTS OF DIGIPH PCS, INC.

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DiGiPH PCS, Inc. ("DiGiPH"), by its attorneys, respectfully submits its comments in the above-captioned proceeding. DiGiPH won eight (8) broadband Personal Communications Service licenses in the Commission's C Block auction.<sup>1</sup> Therefore, DiGiPH is an interested party in this proceeding. DiGiPH tendered its installment payment due March 31, 1997 to the Commission and hereby submits comments advocating the return of its, and other similarly situated licensees', installment payment originally due March 31, 1997, plus interest for the time from March 31, 1997 until reimbursement is made. In the alternative, DiGiPH seeks to be compensated for the time value of its money at a commercial rate of interest.

DiGiPH tendered its March 31, 1997 installment payment of \$1,177,234.17 on a timely basis. On April 9, 1997, DiGiPH submitted a letter to the Commission requesting

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<sup>1</sup> DiGiPH PCS, Inc. participated in the C Block auction under the name Mobile Tri-States L.P. 130. On March 21, 1997, the FCC granted the pro forma transfer of control of Mobile Tri-States L.P. 130 to DiGiPH Communication, Inc., and the pro forma assignment of broadband PCS licenses from Mobile Tri-States L.P. 130 to DiGiPH PCS, Inc. (FCC File Nos. 50074-CW-TC-97; 50075-CW-AL-97). These transactions have been consummated.

a refund of this payment.<sup>2</sup> DiGiPH submits that a full refund of these monies is the only remedy that would make DiGiPH whole.

The Commission's Order suspending this payment obligation was released too late to allow DiGiPH to cancel its pre-arranged payment. Given the late release of this Order and the numerous requests for refund received by the Commission, it is doubtful that any C block licensee which intended to fulfill this payment obligation had sufficient time to react to the Commission's decision. Thus, the only parties benefiting from the Commission's Order are those C block licensees that did not intend to tender the March 31, 1997.

DiGiPH is a small business ultimately owned by two rural telephone companies, and is the type of entity Congress intended to benefit through the C block auction. While DiGiPH appreciates the Commission's suggestion to compensate licensees for the time value of their payments, this proposed relief falls short of making DiGiPH whole. The Commission has not indicated how long this suspension of payments is expected to last, although three months have already passed. Some C block licensees propose to suspend installment payments for five years or more.<sup>3</sup> It would hardly be equitable for the Commission to withhold DiGiPH's March 31 payment for this substantial length of time.

DiGiPH would most benefit by allocating this suspended payment towards other build-out expenses to speed deployment of its PCS system. This is how the C block licensees that did not tender the March 31, 1997 payment are using such monies. The Order does not evince an intent to only benefit one class of C block entities to the

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<sup>2</sup> A copy of this letter is attached hereto as Exhibit 1.

detriment of another. Rather, the Order suspends payment obligations for all C block licensees. As discussed above, attempting to reimburse DiGiPH for the time value of this payment is appreciated, but is an imperfect solution because it has the unintended consequence of penalizing entities for honoring Commission payment obligations. The only equitable solution that would truly make DiGiPH, and other C block licensees, whole is for the Commission to refund the March 31 installment payments that were tendered, plus interest for the time from March 31, 1997 until such time as the money is refunded.

In the alternative, DiGiPH seeks to be compensated for the time value of its money at a commercial rate of interest. Although DiGiPH strongly prefers a full refund of its installment payment plus interest, compensation at a commercial rate of interest is certainly more equitable than the Commission's retention of DiGiPH's payment without compensation for the time value of money.

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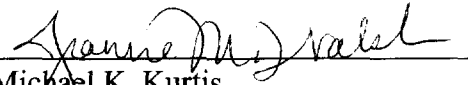
<sup>3</sup> See, e.g., Letter from James H. Barker and Michael S. Wroblewski, Counsel to Fortunet Communications, L.P., to Mr. William F. Caton, Secretary, Federal Communications Commission (May 9, 1997).

Conclusion

In light of the above, DiGiPH respectfully requests a refund by wire transfer of its \$1,177,234.17 March 31, 1997 installment payment plus interest from March 31, 1997 until such time as reimbursement is made. In the alternative, DiGiPH seeks compensation for the time value of its money at a commercial rate of interest.

Respectfully submitted,

DiGiPH PCS, INC.

By:   
Michael K. Kurtis  
Jeanne M. Walsh  
Kurtis & Associates, P.C.  
2000 M Street, N.W., Suite 600  
Washington, DC 20036  
(202) 328-4500

Its Attorneys

Dated: June 23, 1997

EXHIBIT 1

RETURN COPY

KURTIS & ASSOCIATES, P.C.

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WASHINGTON, D.C. 20036

(202) 328-4500  
TELECOPIER (202) 328-1231

April 9, 1997

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APR 9 1997

Federal Communications Commission  
Office of Secretary

Hand Delivered

Regina Dorsey, Chief  
Billings and Collections Branch  
Federal Communications Commission  
1919 M Street, N.W.  
Room 450  
Washington, DC 20554

Re: DigiPH PCS, Inc.  
Refund of Suspended Installment Payment  
For C Block Broadband Personal Communications Service Licensee

Dear Ms. Dorsey:

DigiPH PCS, Inc. ("DigiPH"),<sup>1</sup> by its attorneys, hereby submits a formal request for refund of DigiPH's March 31, 1997 \$1,177,234.17 installment payment for its C Block broadband Personal Communications Service licenses. DigiPH tendered this March 31, 1997 installment payment in a timely manner. On that very date, the Wireless Telecommunications Bureau, however, adopted and released an Order which suspended the March 31, 1997 deadline for installment payments for all broadband C Block PCS licensees until further notice. A copy of this Order is attached for your reference as Exhibit A.

DigiPH tendered its \$1,177,234.17 installment by wire transfer to ensure timely submission of its March 31, 1997 payment obligation. The timing of the Commission adoption and release of its Order suspending the March 31, 1997 deadline was too late to allow DigiPH to stop its pre-arranged payment. Ironically, given the lateness of the release of the Order, it is unlikely that any C Block licensee intending to fulfill its March 31, 1997 payment obligation in a timely manner could have reacted to the Commission's Order in sufficient time to cancel its payment. While the Commission Rules clearly allow a grace period for the submission of installment payments without triggering an event of default, it cannot be the Commission's intent to allow its Order to only benefit those C Block licensees who were not intending to make timely

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<sup>1</sup> On March 21, 1997, the FCC granted the transfer of control of Mobile Tri-States, L.P. to DigiPH Communication, Inc., and the assignment of broadband PCS licenses from Mobile Tri-States, L.P. to DigiPH PCS, Inc. (FCC File Nos. 50074-CW-TC-97, 50075-CW-AL-97). These transactions have been consummated.

Regina Dorsey, Chief  
April 9, 1997  
Page 2

payment. DigiPH, a small business ultimately owned by two rural telephone companies, would greatly benefit by allocating this suspended installment payment towards other build-out expenses to speed deployment of its PCS system.

On its face, the Commission Order applies to *all* C Block licensees. Accordingly, to deny DigiPH's request would not only be inconsistent with the Order but would have the unintended consequence of penalizing C Block licensees which sought to comply, and in fact did comply, with the Commission's rules and make timely payments, while conferring a benefit on those licensees which did not make such timely payments. Clearly, the Commission must treat all C Block licensees similarly with respect to the submissions of installment payments. Melody Music, Inc. v. FCC, 345 F.2d 2029 (D.C. Cir. 1965).

DigiPH submitted its payment by wire transfer and requests its refund by wire transfer as well. The account information necessary for the Commission to refund DigiPH's installment by wire transfer is attached hereto as Exhibit B.

If you have any questions or require additional information with respect to this matter, please communicate directly with this office.

Very truly yours,



Jeanne M. Walsh

cc (hand delivered): Kathleen O. Ham  
Jerome B. Fowlkes

EXHIBIT A



DA 97-649

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

In the Matter of )  
 )  
Installment Payments for )  
PCS Licenses )  
 )

ORDER

Adopted: March 31, 1997

Released: March 31, 1997

By The Chief, Wireless Telecommunications Bureau:

1. In order to implement the requirement of Section 309(j) of the Communications Act that the Federal Communications Commission promote the dissemination of licenses among a wide variety of auction applicants,<sup>1</sup> the Commission has adopted a program to allow small businesses to pay for their licenses in installment payments.<sup>2</sup> The auction of 986 broadband Personal Communications Service (PCS) licenses for the C and F blocks, in particular, has resulted in the Commission amassing a significant installment payment loan portfolio. Commission staff has actively been working with other federal agencies regarding the transfer of responsibilities for certain debt functions related to this program. These discussions may result in a change in the procedures for making and collecting installment payments in the near term. Additionally, on March 13, 1997, several C block licensees filed a joint request with the Commission, seeking to modify their existing installment payment obligations by moving from a quarterly to an annual payment schedule.<sup>3</sup>

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<sup>1</sup> 47 U.S.C. § 309(j)(3)(b).

<sup>2</sup> See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994).

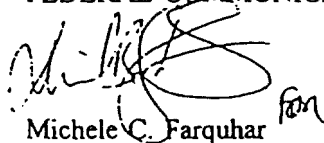
<sup>3</sup> Petitioners include Alpine PCS, Inc., DCR PCS, Inc., Eldorado Communications, L.L.C., Indus, Inc., KMTel L.L.C., Mercury PCS, L.L.C., Microcom Associates, NextWave Communications, Inc., and R&S PCS, Inc. See Letter from Thomas Gutierrez et al., to Michele C. Farquhar, Esq., Chief, Wireless Telecommunications Bureau (March 13, 1997).

2. Pending resolution of these matters, the Wireless Telecommunications Bureau will today suspend the March 31, 1997 deadline for all installment payments for the C block broadband PCS licensees until further notice. This action today applies to broadband PCS licenses that have already been issued. Broadband PCS licensees that have not yet been issued their F block licenses, and that are eligible for installments, will be treated similarly by Public Notice. This Order, however, has no effect on the down payments required for such licenses.

#### ORDERING CLAUSE

3. Accordingly, IT IS ORDERED that the installment payment deadline for all broadband PCS installment payments is suspended pending further action that will reinstate such deadlines. Interest will continue to accrue on all unpaid installment payments until such action is taken and this Order is lifted. This action is taken pursuant to delegated authority, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION



Michele C. Farquhar  
Chief, Wireless Telecommunications Bureau

EXHIBIT B

The wire transfer information for the refund of DigiPH's installment payment is as follows:

Compass Bank  
Routing Transit Identification: \*  
Account Number:  
Amount:

\*Wire transfer information redacted for purposes of this filing. 6/23/97